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EXAMINER
GULIAN, J

EDWIN M. SZALA
NATIONAL STARCH AND CHEMICAL CO.
BOX 6500
BRIDGEWATER, NJ 08807

ART UNIT 1302 | PAPER NUMBER

DATE MAILED 04/17/92

COMMISSIONER OF PATENTS AND TRADEMARKS

☐ This application has been examined ☒ Responsive to communication filed on 2-6-92 ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), 0 days from the date of this letter. Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. ☑ Notice of References Cited by Examiner, PTO-892.
2. ☐ Notice re Patent Drawing, PTO-948.
3. ☑ Notice of Art Cited by Applicant, PTO-1449.
4. ☐ Notice of Informal Patent Application, Form PTO-152
5. ☐ Information on How to Effect Drawing Changes, PTO-1474.
6. ☐ _____.

Part II SUMMARY OF ACTION

1. ☑ Claims 29-35 are pending in the application.
   Of the above, claims _____ are withdrawn from consideration.
2. ☑ Claims 1-8, 11, 19-28 have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☑ Claims 29-35 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____. has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.
13. ☐ Since this application apppears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

PTOL-326 (Rev.9-89)

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 29-35, all the claims in the case, are rejected under 35 U.S.C. § 102(e) as anticipated by or, in the alternative, under 35 U.S.C. § 103 as obvious over Tomita et al for the reasons advanced in rejecting the formerly presented claims in the last office action.

Applicants argue that they are not claiming the modified gum. Applicants overlook that the reference also discloses food associations.

Applicants also argue that the reference does not disclose the gum as a functional replacement in foods. It is pointed out that the same claimed ~~oils~~ acts in the same relationship must necessarily produce the same results. Moreover, the applied Tomita et al show food and beverage associations and it is thought clear that the reference contemplates the combinations consistent with the arguments.

Applicant's also argue that they antedate the Tomita et al

references by way of affidavit. It is not seen that the 131 affidavit ~~welcomes~~ overcomes the pertinency of Tomita et al since it does not overcome the relevancy of 715.03 MPEP.

Claims 29-35 are rejected under 35 U.S.C. § 103 as being unpatentable over Hill in view of the admitted state of the art (Barnett et al) for the reasons advanced in rejecting the claims in the previous office action.

Applicants' arguments do not fairly address the office position. While Applicants acknowledge that the rejection is on the combined teachings of the art, the thrust of their argument is again directed to each reference separately which arguments are not relevant. It is again pointed out that the applied Hill teaches ~~hydrolipis~~ hydrolysis broadly of a generic family of carbohydrates including the materials of Barnett et al. Barnett et al teach depolymerization to the extent claimed and to depolymerize the products of Hill to the extent of Barnett would have only involved the ordinary skill of one in the art. Both Barnett et al and Hill shows food relationships and the use as claimed would have been obvious.

Claims 29-35, all the claims in the case, are rejected under 35 U.S.C. § 102(e) as anticipated by or, in the alternative, under 35 U.S.C. § 103 as obvious over Whistler newly cited.

Whistler discloses the use of a tamarind hydrolyzate of the general type claimed in foods. Features variously recited in the claims, if not specifically taught by the reference, are inherent or obvious thereover.

The reference is a U.S. patent that claims the rejected invention. An affidavit or declaration is inappropriate under 37 C.F.R. § 1.131(a) when the patent is claiming the same invention. The patent can only be overcome by establishing priority of invention through interference proceedings. See M.P.E.P. § 1101.02(g) for information on initiating interference proceedings.

No claim is allowed.

Any inquiry concerning this communication should be directed to Joseph Golian at telephone number (703) 308-3851.

Joseph Golian/cp
April 16, 1992

JOSEPH GOLIAN
PRIMARY EXAMINER
ART UNIT 132